

DEPARTMENT OF DEFENSE BLOGGERS ROUNDTABLE WITH ARMY COLONEL MARK MARTINS, STAFF JUDGE ADVOCATE FOR MULTINATIONAL FORCE IRAQ AND LEGAL ADVISOR TO GENERAL DAVID PETRAEUS VIA TELECONFERENCE FROM IRAQ TOPIC: PROGRESS IN IRAQI RULE OF LAW AND THE BAGHDAD SNIPER CASE TIME: 12:16 P.M. EDT DATE: THURSDAY, AUGUST 2, 2007

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CHARLES "JACK" HOLT (chief, New Media Operations, OASD PA): Okay. We can get started here. Colonel Mark Martins, welcome to the bloggers roundtable, and thank you for taking the time to join us here, sir.

Do you have an open statement we can get started?

COL. MARK MARTINS: Sure. I could say a couple of things here. Well, good evening. I guess it's earlier there for you. I'd like to say a couple things about the criminal justice system at work in Iraq. As the surge of operations targets extremists and expands into former terrorist safe havens, Iraqi law enforcement and the Central Criminal Court are investigating and prosecuting accused terrorists and criminals. One recent case concerned three men who were detained in October of last year. On 22 July, the Iraqi Central Criminal Court found Jassim Hussein Nabir (sp) and Mohammed Sabay Latas (sp) guilty of violating Article 4 -- correction -- Article 4, subparagraph one of the anti-terrorism law in Iraq. And then on 25 July, Mustafa Hussein (sp) was also found guilty of violating the same provision. This is Article 4, subparagraph one of the anti-terrorism law. And all three received capital punishment.

The three were self-proclaimed members of Jaish al-Islami and were recruited to be snipers. This sniper cell was captured by the 6th Iraqi Army Division on 19 October when they were seen driving in a suspicious manner. After pulling them over, observant Iraqi soldiers saw a pistol and empty shell casings lying in the back of their van. The sniper cell then tried to resist arrest, and two of the three were shot and injured in the fight.

Following the arrest, Iraqi and coalition forces conducted a thorough search of the van and found a well-conceived sniper rifle -- well-concealed sniper rifle, I should say, and a .22-caliber weapon with a scope and silence. Also found were a video camera with a sniper video on tape, two fully loaded magazines, one box of .22-caliber ammo, two hand grenades, and 108,000 Iraqi dinar. There was a hidden compartment in the van seat that enabled the snipers to conceal the weapons. The search also revealed that the van had been modified to be used as a sniper platform. Beside the hidden compartment there was also a porthole in the rear of the van that would allow a sniper to shoot in a concealed position.

Furthermore, there was a mount for the video camera found inside the van.

Notably, two of the defendants gave full confessions. They admitted that they were -- all three of the men were part of the sniper cell for Jaish al-Islami. Nabir Hussein Jassim al-Shammari (sp) and Mohammed Sabay Latas al-Samarra (sp) were snipers, and Mustafa Hussein al-Wan (sp) was the driver. A Jaish al-Islami operative recruited them for the sniper operations; also in their confession was that the recruiter bought a van for them and modified it for sniper operations, paid the sniper cell for each successful operation if he was given a video of the operation.

They shot at 11 coalition soldiers and believed that they had killed at least two. They also admitted to shooting a Jaish al-Mahdi leader who they thought was involved in the sectarian violence.

Nabir (sp) was shown a terrorist video of 28 sniper shootings and identified eight of those clips as missions that he had personally conducted. The video in the van contained a clip of one operation conducted near the time of their capture. Their operations were conducted primarily in Al-Amiriya and in -- the neighborhood of Baghdad, Al-Amiriya in Baghdad. Their operations occurred over a period of about two months.

And although the capture took place last October, the trial that was concluded is a(n) important component to the progress Iraq is making in restoring confidence and the rule of law. It's a small step. Rule of law is not prevailing in Iraq, but small, measured steps are being taken -- holding individuals accountable in courts under law, following the evidence where it leads.

And with that, I'll go ahead and answer questions.

MR. HOLT: Okay. Thank you, sir.

Grim from Blackfive, you were first online. Why don't you get us started.

Q This is Grim of blackfive.net. I was wondering about the law in Iraq -- you were talking about the capture of snipers with video equipment; we know that making these videos and distributing them is an important part of the insurgent war effort. Does Iraqi criminal law treat the making of videos, insurgent videos as a serious crime? Can you give us a sense of what the penalties for that might be, separate from other acts of war?

COL. MARTINS: Well, the -- not videos specifically that I'm familiar with, sir. The -- terrorism as a crime is -- has special penalties associated with it, both under the Iraqi Criminal Code and then under the antiterrorism law, which was passed in 2005; the -- terrorism of course being an individual or an armed group targeting entities, official or unofficial, seeking to damage public or private property, create horror amongst people to achieve political ends. I mean, that's the essence of a terror offense. And the use of video equipment found in this manner is indicative of that kind of intent, so it can result in a charge and a conviction under either Paragraph 194 of the Iraqi Criminal Code or one of the provisions of the antiterrorism law.

So it's a -- I have not seen anywhere in the code specifically the use of video being an aggravated circumstance or an element of an offense, but it is

indicative, in this case, of a political motive, of an attempt to use armed force to achieve political ends, strike terror into people and create a political effect.

Who was that that was asking that question, but the way?

Q Grim of blackfive.net.

COL. MARTINS: Great. Thank you.

Q Thank you.

MR. HOLT: Okay. Mark Finkelstein.

Q Yes, this is Mark Finkelstein from NewsBusters. Colonel, thank you very much for joining us today.

COL. MARTINS: Good to be here.

Q You know, we know the -- I'm trying to understand under what circumstances people that are captured are tried under criminal law and in what circumstances they are detained under other status. I mean, for example, obviously we know that various people have been detained at places like Guantanamo. Is it now policy that when coalition forces capture people they are generally going to be tried under Iraqi criminal law, or are there other circumstances in which some of those people would be treated as enemy combatants, et cetera?

COL. MARTINS: That's an excellent question.

Well, the -- an individual can be detained under the authority the multi-national force has under Security Council resolutions as a security internee, as a threat to stability and security in Iraq, and this is a standard that is coming essentially from the Law of Armed Conflict. The phrase "security internee" and "threat to security and stability in Iraq" are taken from the fourth Geneva Convention, one of the 1949 Geneva Convention -- specifically the one for the protection of civilians in time of war. And that was incorporated by reference into the 1546 -- the first Security Council resolution after Iraq -- the Iraqi interim government took power in '04.

So that is a Law of Armed Conflict standard. It is a standard that enables a threat to security to be detained, and it is not a criminal law process of moving toward a trial.

Having said that -- and individuals who are detained under that standard undergo a series of reviews to ensure that there is a basis for which to deem them a threat to security and stability, and that gets reviewed every six months by a combined board of coalition and Iraqi officers. And if there is evidence as opposed to intelligence -- I mean, evidence that can be divulged in court without threatening sources and methods useful to continued counterinsurgency, the coalition and the multi-national force has been sending roughly an eighth to a twelfth, depending on the time -- I think the most recent figures I saw were about a twelfth of the detainees were being turned over to the Iraqi Central Criminal Court for prosecution because there was sufficient evidence available that did not involve, you know, sensitive sources and methods.

So, yes. I mean, the bottom line is, a good number of individuals are being turned over to the Iraqi system for trial.

Q Interesting. Thank you.

COL. MARTINS: Sure.

MR. HOLT: Yeah, interesting.

Q Hey, Colonel, Andrew Lubin from ON Point. Good to talk to you again, sir. How are things?

COL. MARTINS: Hey, good to talk to you, Andrew.

Q Good.

Colonel, the -- yesterday and the day before, the Sunni majority has -- the Sunni minority, excuse me, in the government has bolted the prime minister's government due -- (inaudible) -- one of the reasons was because the government, they claim, is holding a lot of Sunnis without charges. We've also read that it's in the hundreds. How accurate is this, and if it is, how -- what kind of commitment does Mr. Maliki's government have to the rule of law?

COL. MARTINS: Well, I recommend you direct those questions to the Maliki government.

The -- I can tell you some things that I have seen about commitment to the rule of law recently. In February the prime minister signed a state of emergency measure in which he said that the grand crimes or the major crimes of the emergency would be tried by the Central Criminal Court of Iraq sitting in emergency session.

In June he signed a couple of additional orders directing that resources be provided for the Rule of Law Complex -- they call it the "Mujama Siad dit al Kinun" (ph) in Rusafa -- Michael Gordon covered that a couple of days ago in The New York Times -- and they've put \$49 million of Iraqi funds to sustaining that complex through the end of this year. It involves the building of an additional about 5,000 humane detention cells in Baghdad. They assigned Iraqi judges -- Chief Judge (Hamed ?) had assigned Iraqi judges to this secure complex. And the minister of the Interior -- again, with the prime minister's urging -- assigned additional police investigators. There are 30 -- about 30 being trained by federal law enforcement agents to an advanced standard of, you know, forensic and other evidence gathering capability in attempt -- all of this an attempt to improve processing and increase the evidence basis for decisions being made by judges. Chief Judge (Hamed ?) had us send judicial review teams out to detention facilities that are containing individuals who have not had their day in court yet.

So I've seen activity by the government to address detention problems to address the things that (TUAFAC ?) has been complaining about. It doesn't mean that those complaints and those concerns being raised by the minority are not appropriate to be raised -- it's just that I've seen the -- a fuller effort to try to deal with these complaints. So it -- they recognize it collectively as an important problem, and they're not putting just high-sounding phrases against the problem. They're devoting institutions, people, time, money; trying to integrate those in a way that works. They're increasing the number of inspections.

But they have a long way to go. The Rule of Law Complex in Rusafa, which is run by the Iraqi Correction Service, has just about 4,000 detainees in standards that meet the international requirements of 25 square feet per detainee and other humane standards. And they are getting after the problem of ensuring all the detainees are in the database and accounted for and that there's a file and that they're reviewing the file. I know the Central Criminal Court of Iraq has released more than 300 detainees because there wasn't enough evidence in their files -- just saw that statistic from the Central Criminal Court at Rusafa.

So they're trying to get after the review and detention. I think the transparency, the debate, the complaints that are coming are, frankly, healthy. I think they create a greater level of scrutiny and a sort of policing effort going on to try to clean up the problems.

Q Okay. Thank you.

MR. HOLT: Okay. And Mike Goldfarb.

Q Thanks for taking the time to do this, sir.

If you could talk a little bit to the interrogations and sort of what level of cooperation there is between American and Iraqi forces and what Iraqi forces bring to the table maybe that, you know -- just sort of a -- is there anything that they bring to the table that Americans don't that increases effectiveness in these kinds of incidents?

COL. MARTINS: Well, they certainly know the language. They can instinctively know the plausibility of an explanation -- you know, if it meets geographically their understanding of the city. They'll know a block and a neighborhood by its local name. They are savvy in a lot of ways that a soldier from, you know, a small town in the Midwest wouldn't be, certainly, who doesn't know the language.

In terms of interrogation, we follow the Army Field Manual on interrogations and the Detainee Treatment Act, and that's a pretty clear set of standards for U.S. forces.

The Iraqis are engaged in interrogations of their own individuals in police stations and other Iraqi Security Force detention facilities: Army soldiers, for instance, under the state of emergency have the authority to detain and -- you know, frankly, whenever we're with them, we insist on that -- the standard that we apply to ourself. Frankly, they're questioning individuals outside of our presence at times, and there is a -- whenever there's --

Go ahead. Can you talk? Are you saying something?

MR. HOLT: No. No.

COL. MARTINS: Okay.

MR. HOLT: Okay, sir?

Q He was just getting to the good part.

MR. HOLT: Colonel Martins? Colonel Martins, are you still with us?

Q Maybe that was him bleeping off.

MR. HOLT: We may have lost that connection.

Q That was just what I wanted to hear, too.

Q Yeah.

MR. HOLT: Yeah. Well, maybe --

OPERATOR: Hey, gentlemen, this is Amanda Malone (sp) here. We'll try and see if we can -- hopefully he's trying to call back in, but we'll contact his office and see if we can make sure he at least makes the attempt to get back on the line.

MR. HOLT: Okay. We'll wait here just a second and see what -- give him a few minutes and see what happens here.

OPERATOR: Thank you.

(Break while Col. Martins was reconnected to the conference call.)

MR. HOLT: And this is Zack and Colonel Martins, is that -- are you back with us?

COL. MARTINS: I'm back -- I'm back. I got cut off. I was calling using my AT&T card and I guess I ran out of minutes. I apologize.

MR. HOLT: (Laughter.) That's all right.

COL. MARTINS: I'm borrowing a fellow soldier's here. He says he's not going to be able to call his mother tonight but I'm going to get him another one.

MR. HOLT: Yeah, we can -- we'll hook him up.

COL. MARTINS: (Laughter.) Yeah, so we were talking about questioning. If there's --

Q Yeah. Your --

COL. MARTINS: -- if you'd like we could try to link you up with some individuals who've, you know, done -- who've seen Iraqis interview soldiers. I'm the staff judge advocate for the command. I don't observe these kinds of sessions. I do see investigative hearings on occasion where investigative judges, Iraqis are reviewing the statements of individuals who've provided evidence to the court.

Q Can you speak specifically to this arrest? Was it able to lead to any other arrests outside of this cell?

COL. MARTINS: This one, my understanding, did not. It did not but it -- it was a result of two of them giving -- corroborating concessions. While sequestered they gave very similar stories that had the ring of truth to the investigative judge who was taking them, and then of course you had the physical evidence and the videos that they were able to, you know, point to in --with

recognition so it's sort of a self-contained case. But powerful -- a powerful example of Iraqis following the evidence where it led and enforcing the law.

Q Just let me ask one more question if it's all right. Do you follow up with the families of the soldiers that you believe were targeted by these guys to let them know that you got the people who --

COL. MARTINS: I tell you, we have not been able to confirm who the two are that these individuals say they killed. They are -- they were firm in the recognition of having shot at 11 but we weren't able to confirm who they believe they killed. Soldiers who are killed are identified. The casualty notification process begins all efforts to indicate why they died (or made ?) and families are provided updates as more information is known, but I am not aware that we've been able to link up this information about these defendants claiming that they'd killed two Americans with specific U.S. soldiers or coalition soldiers. But, you know, as information of that sort provides an update to a casualty report, that evidence or that information is passed along in an updated casualty report to the next of kin.

Q Thanks very much, Colonel.

COL. MARTINS: Sure -- sure.

MR. HOLT: Okay. Any other questions?

Q I have a question. Changing topics a little bit -- within the last week we've seen the op-ed piece in The New York Times by the two Brookings Institutional scholars reporting positive results from the surge. We've also had comments that was -- that were made by John Burns, the Baghdad bureau chief of The New York Times to Hugh Hewitt along the same lines. Can you give us any comments on that -- whether, you know, hey, has -- have those reports becomes themselves the topic of conversation in the coalition in Iraq? What sort of impact might it be having on the Iraqi government in terms of encouraging them - - their cooperation and also for our service people in the field?

COL. MARTINS: Well, you know, I'm operating in a particular lane and can't really provide you a good readout on how a particular column or couple of columns might impact the Iraqi government. I am aware they read the news -- they react to it sometimes. I've heard them speak in meetings about Western and Arabic media. I think we're sawing the wood in front of us, trying to do our jobs as best we can and seeing at least in my area -- in the area of law enforcement, integrating police, courts, prisons -- you know, the basic blocking and tackling of a criminal justice system -- I'm seeing incremental progress.

No dramatic strokes -- no spectacular sensational advances but some encouraging steady progress in some key areas, and you have to give the Iraqis their due. I mean, they're doing some things now between agencies, between ministries to pull together security for judges, more humane detention space, and these things are encouraging -- the thought that if you can provide them security you can get evenhanded evidence-based transparent results from independent judges and get the kind of lasting security that will be present, you know, after the Stryker vehicle leaves the nearest street corner. So, I mean, that's what I'm seeing in my area. It's not really a function of what I'm reading though. Q I understand. If I can quickly follow up on something that is within your bailiwick -- I've seen references made to investigative judges within the Iraqi system which would be a facet of a continental or a civil law system. Can you confirm that the Iraqi criminal law system is

generally based on a continental system rather than on a common law system such as in the United States or the U.K.?

COL. MARTINS: I can confirm that. Yeah, it's a Romano-Germanic or civil law model where the main engine of the system, so to speak, in terms of uncovering the evidence is a -- an investigative judge who's got power to bring all forms of evidence in front of him or her and prepares a report based on that to a trial panel which conducts a hearing that we would look at familiar with the U.S. or British systems and say it's a less elaborate proceeding. You don't have the face-off between, you know, the states and the -- represented by the prosecutor and the defense counsel and the developing of evidence in front of a relatively detached judge. You get essentially a questioning of the accused based on a full reading of a file that -- a full file that the investigative judge is provided. So it is -- it's a civil law model and the code looks not too different from what you'd see in some Central European countries.

Q Is there trial by jury in any cases?

COL. MARTINS: No. It's a professional panel of three trial judges that does the trial.

Q Okay. Very interesting. Thank you.

COL. MARTINS: Sure.

MR. HOLT: All right, and we're just about out of time here. Colonel Martins, any final thoughts?

COL. MARTINS: Well, it is that -- appreciate your interest in this topic. It's a -- it's not a -- again, not a glamorous or sensational one and it -- for -- but for a lawyer who, you know, when he sees it -- law working -- he sees it being applied calmly and methodically, incrementally it's -- there's some dramatic developments happening in Iraq in the rule of law.

MR. HOLT: Thank you very much, sir, and hopefully we can get you on again here in the near future and speak some more of these things. We appreciate you giving us the time this afternoon and this evening, your time.

COL. MARTINS: My pleasure, and I apologize for that interruption.

MR. HOLT: (Laughter.) No problem, sir.

COL. MARTINS: Take care. Q Thank you. Thank you, Jay.

Q Colonel, thanks for the time. Appreciate it.

COL. MARTINS: Sure. Bye bye.

END.